When the record contains an officer's return that a copy of the petition was served, service is afforded a presumption of regularity.[In the Matter of J.I.A.](14-1-6)

On December 17, 2013, the Houston (1st Dist.) Court of Appeals held that an appellant's assertion that he was not served with a copy of the petition, standing alone, was insufficient to rebut the presumption of regularity in service where other evidence of service exists.

¶ 14-1-6. **In the Matter of J.I.A.**, MEMORANDUM, No. 01-12-00791-CV, 2013 WL 6670849 [Tex.App.—Houston (1st Dist.), 12/17/13]

Facts: Appellant, pursuant to an agreed punishment recommendation with the State, pleaded true to having engaged in delinquent conduct by committing the offense of aggravated sexual assault of a child. After a hearing, the juvenile court entered its order of adjudication and made an affirmative finding that appellant was in need of rehabilitation. In accord with appellant's agreement, the juvenile court assessed his punishment at probation until his eighteenth birthday, ordered that he be committed to the custody of the Harris County Chief Juvenile Probation Officer ("CJPO"), ordered that he participate in sex-offender counseling, and deferred its determination on whether he would be required to register as a sex offender. Although the juvenile court granted permission to appeal its order of adjudication, appellant did not appeal.

A year later, the State moved for a modification disposition (referred to by the parties as a "Reopen"), alleging that appellant had committed two new misdemeanor offenses. Appellant stipulated to the State's evidence and signed a judicial confession, admitting to having committed the offenses. In accord with appellant's punishment agreement with the State, the juvenile court assessed his punishment at probation for one year.

Subsequently, the State again moved for a modification disposition (referred to by the parties as a "2nd Reopen"), alleging that appellant had violated the terms of probation by failing to report to his juvenile probation officer as required, attend school and sex-offender counseling as ordered, and abide by the curfews imposed by the court. After a deputy constable tried unsuccessfully to serve appellant and his mother with the State's second petition for modification, service was "reissued." The return shows that the deputy successfully served appellant, who was in state jail custody, and his mother.

One day before appellant's eighteenth birthday, the juvenile court held a hearing, at which he appeared with counsel, on the State's second petition for modification. In its modification order, the trial court revoked appellant's probation, but made no further disposition in the case other than ordering appellant to publicly register as a sex offender.

In his first issue, appellant argues that the juvenile court lacked jurisdiction to render its original adjudication order because "the record does not affirmatively show that [he] was served with the petition and citation" in the original proceeding. He argues, thus, that the juvenile court's subsequent modification order requiring him to register as a sex offender is "void."

Held: Affirmed.

Memorandum Opinion: Assuming without deciding that appellant may raise in an appeal from a modification order the issue of failure of service in the underlying adjudication proceeding, we conclude that appellant nevertheless cannot prevail on the record before us.

In proceedings before a juvenile court, due process requires notice that would be deemed constitutionally adequate in a civil or criminal proceeding, and such notice must be given sufficiently in advance of trial to give the accused a reasonable amount of time to prepare. In re Gault, 387 U.S. 1, 33, 87 S.Ct. 1428, 1446 (1967). Texas Family Code section 53.06 provides that a juvenile court "shall direct issuance of a summons" to the child named in the petition, among others. See TEX. FAM.CODE § 53.06(a) (Vernon 2008). "A copy of the petition must accompany the summons," and "[t]he summons must require the persons served to appear before the court at the time set to answer the allegations of the petition." Id. § 53.06(b).

A juvenile may not waive service of process by written stipulation or voluntary appearance at trial. See TEX. FAM.CODE ANN. § 53.06(e) ("A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing."). A juvenile court lacks jurisdiction if the record does not contain an affirmative showing of service on the juvenile, notwithstanding the juvenile's appearance at trial. In re D.W.M., 562 S.W.2d 851, 853 (Tex.1978).

A valid officer's return creates the presumption of service and regularity, and the burden is on the defendant to show inadequacy of service. See Polanco v. State, 914 S.W.2d 269, 271 (Tex.App.-Beaumont 1996, pet. ref'd) (citing Sauve v. State, 638 S.W.2d 608, 610 (Tex.App.-Dallas 1982, pet. ref'd)). Although section 53.06 does not require that the summons or the return expressly state that a copy of the petition was delivered, there must be some indication in the record that a copy of the petition was served on the defendant. Polanco, 914 S.W.2d at 271.

Here, with respect to the adjudication proceedings, the record shows that on February 27, 2009, a citation was issued for appellant. The citation recited that a copy of the petition was attached, and it commanded the officer serving the citation to deliver to appellant "[a] true copy of this writ, together with a true copy of the petition." The summons directed appellant to appear at a hearing on March 5, 2009 at 9:30 a.m. to be held on the "5th floor, Juvenile Justice Center, Houston, Texas." And it recited that appellant was to answer the allegations "as fully set out in the accompanying true copy of the petition" of "Kristen E. Moore, Plaintiff." The return shows that Harris County Constable's Office Deputy Perez served appellant in person at 10:01 a.m. on "3/2/09" at the Harris County Jail. In addition, the records of the Harris County Justice Information Management System, which are contained in the clerk's record before us, show that appellant was detained from February 19, 2009 until March 2, 2009, when he was served.

Further, in his stipulation to the evidence and judicial confession, executed in the adjudication proceeding, appellant agreed that he was "served with a summons and petition in this case ." See Light v. State, 15 S.W.3d 104, 107–08 (Tex.Crim.App.2000) (stating that juvenile's admission that he was personally served constitutes evidence to be considered in determining whether record sufficiently shows proper service).

Conclusion: We conclude that appellant was served in compliance with the requirements of the Family Code.